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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,298	08/05/2003	Herbert R. Radisch JR.	10745.137.2	7962

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NYDEGGER & ASSOCIATES  
348 OLIVE STREET  
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EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,298	<b>Applicant(s)</b> RADISCH, HERBERT R.	
	<b>Examiner</b> Jessica R. Baxter	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2004 and 08 December 2003.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-8 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12082003_06302004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,320,634 to Vigil et al.

Vigil discloses an apparatus for use in performing, an angioplasty procedure at the site of a stenosis in the vasculature of a patient which comprises: an expanding member (balloon 12) defining an axis, said expanding member having an external surface and being insertable into the vasculature of a patient for movement therein between a first configuration wherein the external surface is relative near said axis and a second configuration wherein the external surface is relatively far from said axis (FIGS. 3A and 3B); and a plurality of blade segments mounted on said expanding member (cutting structure 30), with each said blade segment being axially off-set from an adjacent blade segment to allow relative movement therebetween during a movement of said member from said first configuration into said second configuration to embed at least one of said plurality of blade segments into the stenosis while said external surface of said expanding member conforms

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with the stenosis and the vasculature of the patient; a resilient base member (substrate 32) mounted on said external surface of said expanding member, said base member being substantially compliant with said external surface of said expanding member during movement thereof; wherein said base member is elongated and mounted on said external surface of said expanding member with the direction of base member elongation substantially parallel to said axis (FIG. 1); wherein said base member is made of a polyurethane material (Column 4 lines 18-22); wherein said plurality of blade segments mounted on said base member are a blade unit and further wherein said apparatus comprises a plurality of said blade units; wherein said apparatus comprises at least three said blade segments; wherein each said blade segment is elongated defining a blade axis for each said blade segment, and each said blade is mounted on said expanding member with its blade axis substantially parallel to said axis of said expanding member (FIG. 1).

3. Claims 1, 6, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,797,935 to Barath

Barath discloses an apparatus for use in performing an angioplasty procedure at the site of a stenosis in the vasculature of a patient which comprises: an expanding member (concentrator 10) defining an axis, said expanding member having an external surface and being insertable into the vasculature of a patient for movement therein between a first configuration wherein the external surface is relative near said axis and a second configuration wherein the external surface is relatively far from said axis (FIGS. 4 and 5); and a plurality of blade segments mounted on said expanding member (blade 12), with each said blade segment being axially off-set from an adjacent blade segment to allow relative movement therebetween during a movement of said member from said first configuration

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into said second configuration to embed at least one of said plurality of blade segments into the stenosis while said external surface of said expanding member conforms with the stenosis and the vasculature of the patient (FIG. 4); wherein each said blade segment is made of stainless steel (Column 6 lines 15-16); wherein said apparatus comprises at least three said blade segments; wherein each said blade segment is elongated defining a blade axis for each said blade segment, and each said blade is mounted on said expanding member with its blade axis substantially parallel to said axis of said expanding member (FIG. 3).

4. Claims 1, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by PG/PUB 2002/0010489 to Grayzel et al.

Grayzel discloses an apparatus for use in performing an angioplasty procedure at the site of a stenosis in the vasculature of a patient which comprises: an expanding member (balloon 14) defining an axis, said expanding member having an external surface and being insertable into the vasculature of a patient for movement therein between a first configuration wherein the external surface is relative near said axis and a second configuration wherein the external surface is relatively far from said axis; and a plurality of blade segments (FIGS. 7A-7G) mounted on said expanding member, with each said blade segment being axially off-set from an adjacent blade segment to allow relative movement therebetween during a movement of said member from said first configuration into said second configuration to embed at least one of said plurality of blade segments into the stenosis while said external surface of said expanding member conforms with the stenosis and the vasculature of the patient (Paragraph 15 and 17); wherein said apparatus comprises at least three said blade segments; wherein each said blade segment is elongated defining a blade axis for each said blade segment, and

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each said blade is mounted on said expanding member with its blade axis substantially parallel to said axis of said expanding member (FIGS. 1, 2 and 7A-7G).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
jrb

  
**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**

6/17/05